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10/685,151	10/14/2003	Albert A. Ansaldo	8527/5	4796

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Thomas S. Birney, Esq.
Dorr, Carson, Sloan & Birney, P.C.
3010 East 6th Avenue
Denver, CO 80206

EXAMINER

NGUYEN, SON T

ART UNIT PAPER NUMBER

3643

DATE MAILED: 08/25/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/685,151

Applicant(s)

ANSALDO, ALBERT A.

Examiner

Son T. Nguyen

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 03 June 2004.
2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 4,5 and 7-18 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.
5) ☐ Claim(s) _____ is/are allowed.
6) ☒ Claim(s) 4,5 and 7-18 is/are rejected.
7) ☐ Claim(s) _____ is/are objected to.
8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

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Application Papers

- 9) ☐ The specification is objected to by the Examiner.
10) ☒ The drawing(s) filed on 14 October 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

1. Claims 1-3,6 have been canceled.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. **Claims 4,5,7-9** are rejected under 35 U.S.C. 103(a) as being unpatentable over US 3195508 (herein 508) in view of US 4324202 on form PTO-1449 (herein 202) and US 4997284 (herein 284).

For claim 7, 508 discloses a game feeder comprising: a feed storage container 21 having an outlet 26; a feed dispenser 35 (see also fig. 3) attachable at the outlet of the feed storage container; and a support structure 31 detachably supporting the feed storage container above the ground and having detachable legs (col. 2, lines 43-46). However, 508 lacks a collapsible feed storage container formed from a plurality of panels that can be disassembled from one another; and a foot platform.

202 teaches an animal feeder in which the feed storage container is collapsible and formed from a plurality of panels that can be disassembled from one another (see fig. 6). It would have been obvious to one having ordinary skill in the art at the time the invention was made to have the feed storage container of 508 be collapsible as taught by 202 in order to allow for easier storage and transport.

284 teaches a support structure¹⁹ for a hopper 21, in which the structure comprises a foot stand 34. It would have been obvious to one having ordinary skill in the art at the time the invention was made to employ a foot stand as taught by 284 on the support structure of 508 in order to allow a user to stand on the foot stand to fill feed into the container.

For claim 4, in addition to the above, 202 teaches the feed storage container further comprises: a plurality of detachable sides; a bottom having an outlet; and an internal trough directing feed within the feed storage container to the outlet (see figs. 2 & 6, internal trough is in the area of ref. 30 in fig. 2). It would have been obvious to one having ordinary skill in the art at the time the invention was made to employ a plurality of detachable sides; a bottom having an outlet; and an internal trough directing feed within the feed storage container to the outlet as taught by 202 in the game feeder of 508 as modified by 202 & 284 in order to allow for easier storage and transport.

For claim 5, in addition to the above, 508 teaches a lid 22 but not a hinged lid. 284 teaches a hinged lid 32 to close or open a fill opening on top of the hopper. It would have been an obvious substitution of functional equivalent to substitute the lid of 508 as modified by 202 & 284 with a hinged lid as taught by 284, since both types of lid would allow a user to open and/or close an opening on the hopper.

For claim 8, in addition to the above, 284 further teaches the support structure comprises a plurality of steps forming a ladder 33. It would have been obvious to one having ordinary skill in the art at the time the invention was made to employ a plurality of steps forming a ladder as taught by 284 on the support structure of 508 as modified by

202 & 284 (as explained above) in order to allow a user to climb to the top of the hopper for feed refill.

For claim 9, in addition to the above, 202 further teaches removable trough panels forming a chute within the feed storage container to direct feed to the outlet (see figs. 2 & 6, internal trough is in the area of ref. 30 in fig. 2). Therefore, the combination of 508 as modified by 202 & 284 teaches the feed storage container with the features as described above.

4. **Claims 10,12-15,17** are rejected under 35 U.S.C. 103(a) as being unpatentable over US 3195508 (herein 508) in view of US 4997284 (herein 284).

For claim 10, 508 discloses a game feeder comprising a feed storage container 21 having an outlet 26; a feed dispenser 35 (see also fig. 3) attachable at the outlet of the feed storage container; and a support structure 31 detachably supporting the feed storage container above the ground and having feeder brackets (at ref. 32) removably attachable to the feed storage container, and at least one leg removably attachable to the feeder brackets and supporting the feed storage container. however, 508 lacks a foot platform; and a ladder extension removably attachable to the feeder brackets, supporting the foot platform and feed storage container.

284, as mentioned above, teaches a foot platform 34 and a ladder extension 33. It would have been obvious to one having ordinary skill in the art at the time the invention was made to employ a foot platform and a ladder extension as taught by 284 on the support structure of 508 in order to allow a user a place to stand on and climbed onto the top of the hopper for refilling feed or the like.

508 as modified by 284 does not specifically teaches the ladder extension being attached to the feeder brackets. It would have been obvious to one having ordinary skill in the art at the time the invention was made to attach the ladder extension (as taught by 284) to the brackets (as taught by 508) so as to provide the best point of attachment to support the hopper.

For claim 12, 508 teaches a lid 22 but not a hinged lid. In addition to the above, 284 teaches a hinged lid 32 to close or open a fill opening on top of the hopper. It would have been an obvious substitution of functional equivalent to substitute the lid of 508 as modified by 284 (emphasis on 508) with a hinged lid as taught by 284, since both types of lid would allow a user to open and/or close an opening on the hopper.

For claim 13, in addition to the above, the ladder extension of 508 as modified by 284 (emphasis on 284) comprises a series of steps 33.

For claim 14, in addition to the above, 284 teaches a brace (right under ref. 34 in fig. 5) extending between a leg and the ladder extension (see fig. 5, between refs. 98 and 19 is the ladder extension and legs) to support the foot platform. It would have been obvious to one having ordinary skill in the art at the time the invention was made to employ a brace as taught by 284 on the support structure of 508 as modified by 284 in order to further secure and support the foot stand on the structure.

For claim 15, 508 discloses a game feeder comprising a feed storage container 21 having an outlet 26; a feed dispenser 35 (see also fig. 3) attachable at the outlet of the feed storage container; and a support structure 31 detachably supporting the feed storage container above the ground and having feeder brackets (at ref. 32) removably

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attachable to the feed storage container. However, 508 lacks a ladder extension removably attachable to the feeder brackets having a plurality of vertical members forming front legs and at least one step extending between the vertical members; a foot platform extending horizontally across the front legs above the steps; and a plurality of rear legs removably attachable to the feeder brackets.

In addition to the above, 284 teaches a ladder extension (fig. 5 between refs. 98 and 19 is the ladder extension) having a plurality of vertical members forming front legs and at least one step 33 extending between the vertical members; a foot platform 34 extending horizontally across the front legs above the steps; and a plurality of rear legs (see fig. 5). It would have been obvious to one having ordinary skill in the art at the time the invention was made to employ a ladder extension having a plurality of vertical members forming front legs and at least one step extending between the vertical members; a foot platform extending horizontally across the front legs above the steps; and a plurality of rear legs as taught by 284 on the support structure of 508 in order to allow a user to a place to stand on and climbed onto the top of the hopper for refilling feed or the like.

508 as modified by 284 does not specifically teaches the ladder extension being attached to the feeder brackets. It would have been obvious to one having ordinary skill in the art at the time the invention was made to attach the ladder extension (as taught by 284) to the brackets (as taught by 508) so as to provide the best point of attachment to support the hopper.

For claim 17, 508 teaches a lid 22 but not a hinged lid. In addition to the above, 284 teaches a hinged lid 32 to close or open a fill opening on top of the hopper. It would have been an obvious substitution of functional equivalent to substitute the lid of 508 as modified by 284 (emphasis on 508) with a hinged lid as taught by 284, since both types of lid would allow a user to open and/or close an opening on the hopper.

5. **Claims 11,16 & 18** are rejected under 35 U.S.C. 103(a) as being unpatentable over 508 as modified by 284 as applied to claim 10 above, and further in view of US 4324202 (as above and herein 202).

For claims 11 & 16, 202 teaches a feed storage container further comprises: a plurality of detachable sides; a bottom having an outlet; and an internal trough directing feed within the feed storage container to the outlet (see figs. 2 & 6, internal trough is in the area of ref. 30 in fig. 2). It would have been obvious to one having ordinary skill in the art at the time the invention was made to employ a feed storage container with the features as listed above of 202 in place of the feed storage container of 508 as modified by 284 in order to allow the container to be collapsible for easy storage and transport.

For claim 18, in addition to the above, 202 further teaches removable trough panels forming a chute within the feed storage container to direct feed to the outlet (see figs. 2 & 6, internal trough is in the area of ref. 30 in fig. 2). Therefore, the combination of 508 as modified by 284 & 202 teaches the feed storage container with the features as described above.

Response to Arguments

6. Applicant's arguments filed 6/3/04 have been fully considered but they are not persuasive.

Applicant argued that "Applicant asserts that the Office Action impermissibly used hindsight to reconstruct the claimed invention".

7. In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

Applicant argued that "..., there must be a teaching or suggestion within the prior art itself or within the general knowledge of one skilled in the art to look to the particular sources of information and combine particular elements in the precise way the inventor combined these elements. *ATD Corn. v. Lydall, Inc.*, 48 U.S.P.Q.2d 1321 (Fed. Cir. 1998). There is nothing in *Lehman et al.*, *Stonestreet et al.*, or *Tousignant et al.* that teaches or suggests the combination of these elements. Without this suggestion or motivation to modify or combine, the rejection is improper".

In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, the motivation is taught in every secondary reference as explained in the above rejection. For example (the motivations are underlined), 508 discloses a game feeder comprising: a feed storage container 21 having an outlet 26; a feed dispenser 35 (see also fig. 3) attachable at the outlet of the feed storage container; and a support structure 31 detachably supporting the feed storage container above the ground and having detachable legs (col. 2, lines 43-46). However, 508 lacks a collapsible feed storage container formed from a plurality of panels that can be disassembled from one another; and a foot platform.

202 teaches an animal feeder in which the feed storage container is collapsible and formed from a plurality of panels that can be disassembled from one another (see fig. 6). It would have been obvious to one having ordinary skill in the art at the time the invention was made to have the feed storage container of 508 be collapsible as taught by 202 in order to allow for easier storage and transport.

284 teaches a support structure¹⁹ for a hopper 21, in which the structure comprises a foot stand 34. It would have been obvious to one having ordinary skill in

the art at the time the invention was made to employ a foot stand as taught by 284 on the support structure of 508 in order to allow a user to stand on the foot stand to fill feed into the container.

Also, the teachings from 202 and 284 are notoriously well known in the art. Collapsible containers are well known to be used as demonstrated by 202 for ease of transport and storage. A foot stand as demonstrated by 284 is well known to be used to allow a user to reach higher elevation and stand on the foot stand for whatever purpose he/she uses a foot stand for.

Applicant argued that “Tousignant et al. is drawn from a different field of art and is not collapsible”.


In response to applicant's argument that Tousignant et al. is nonanalogous art, it has been held that a prior art reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the applicant was concerned, in order to be relied upon as a basis for rejection of the claimed invention. See *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992). In this case, Tousignant et al. teach a support structure¹⁹ for a hopper 21, in which the structure comprises a foot stand 34. Again, a foot stand is notoriously well known to be used in a variety of application for allowing a user to reach items placed in higher elevation. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to employ a foot stand as taught by 284 on the support structure of 508 in order to allow a user to stand on the foot stand to fill feed into the container.

Conclusion

8. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Son T. Nguyen whose telephone number is (703) 305-0765. The examiner can normally be reached on Monday - Friday from 9:00 a.m. to 5:00 p.m. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter Poon, can be reached at (703) 308-2574. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to Customer Service at (703) 872-9325. The official fax number is 703-872-9306.


Son T. Nguyen
Primary Examiner, GAU 3643
August 21, 2004